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DANA PASQUALE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DANA PASQUALE,

Plaintiff,

v.

LAW OFFICES OF NELSON &
KENNARD,

Defendant.

) **Case No.: 4:11-cv-5265-YGR**
)
) **NOTICE OF MOTION TO DEEM AS**
) **ADMITTED PLAINTIFF'S REQUESTS**
) **FOR ADMISSION**
)
) **Hon. Joseph C. Spero**
)
) **Date: April 5, 2012**
) **Time: 9:30 a.m.**
Location: United States Courthouse, San
Francisco; Courtroom G-5th Fl, 450
Golden Gate Ave., San Francisco, CA
94102

TO ALL PARTIES AND ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on Friday, April 5, 2013 at 9:30 A.M. before the Honorable Joseph C. Spero, at the United States Courthouse, San Francisco Courthouse, Courtroom G-5th Floor, 450 Golden Gate Ave., San Francisco, California, Plaintiff will present her Motion to Deem as Admitted Plaintiff's Requests for Admission. The Motion will be based on the following memorandum and accompanying exhibits, and all other files, pleadings, and records in this action.

1 Dated: February 21, 2013

RESPECTFULLY SUBMITTED,

2 By: Ryan S. Lee

3 Ryan S. Lee

4 Attorney for Plaintiff.

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

DANA PASQUALE,)	Case No.: 3:11-cv-5265-YGR
)	
Plaintiff,)	PLAINTIFF'S MOTION TO DEEM AS
)	ADMITTED PLAINTIFF'S REQUESTS
v.)	FOR ADMISSION
)	
LAW OFFICES OF NELSON &)	
KENNARD,)	
)	
Defendant.)	

NOW COMES Plaintiff, DANA PASQUALE, ("Plaintiff") by and through her attorneys, KROHN & MOSS, LTD., and for her Motion to Deem as Admitted its Requests for Admission to Defendant, LAW OFFICES OF NELSON & KENNARD ("Defendant"), states:

1. On October 28, 2011, Plaintiff filed her Verified Complaint against Defendant pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. 1692 *et seq.* ("FDCPA") and Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq.* ("RFDCPA"). [DE 1].

2. On August 1, 2012, Defendant served its Requests for Admission pursuant to Federal Rule of Civil Procedure 36 on Defendant. *See* Plaintiff's Requests for Admission attached hereto as Exhibit A.

3. Defendant did not respond to Plaintiff's Requests for Admission until January 13, 2013. *See* Defendant's Responses to Plaintiff's Requests attached hereto as Exhibit B.

1 Defendant did not request an extension to answer Plaintiff's requests, nor did Defendant provide
2 any justification for its failure to timely respond to Plaintiff's requests.

3 4. Federal Rule of Civil Procedure 36(a)(3) states "[a] matter is admitted unless,
4 within 30 days after being served, the party to whom the request is directed serves on the
5 requesting party a written answer or objection addressed to the matter and signed by the party or
6 its attorney."

7 5. Federal Rule of Civil Procedure 36(a)(6) states "[o]n finding that an answer does
8 not comply with this rule, the court may order either that the matter is admitted or that an
9 amended answer be served."

10 6. In accordance with Federal Rule of Civil Procedure 37, Plaintiff conferred with
11 Defendant regarding the present motion on February 12, 2013. Defendant agreed to a stipulation
12 regarding Plaintiff's Requests to Admit during this telephone conversation. Plaintiff then sent a
13 copy of the present motion via email to Defendant on February 15, 2013. As of the date of the
14 filing of this motion, Defendant has yet to prepare a stipulation, and has not responded to
15 Plaintiff's email regarding the present motion.

16 7. As Defendant failed to timely respond to Plaintiff's Requests for Admission
17 without justification, Plaintiff hereby requests that its Requests for Admission be deemed
18 admitted as a matter of law in accordance with Fed. R. Civ. P. 36.

19 WHEREFORE, Plaintiff moves this Honorable Court to deem as admitted Plaintiff's
20 Requests for Admission as a matter of law.

21 Dated: February 21, 2013

22 RESPECTFULLY SUBMITTED,
23 By: Ryan S. Lee
24 Ryan S. Lee
25 Attorney for Plaintiff.

PROOF OF SERVICE

I, Ryan Lee, state the following:

I am employed in Los Angeles, California; I am over the age of 18 and am not a party to this action; my business address is 10474 Santa Monica Blvd., Suite 401, Los Angeles, CA 90025. On February 21, 2013, I served the following documents:

On the parties listed below:

Nelson & Kennard
2180 Harvard St., Suite 160
Sacramento CA 95815-3314

By the following means of service:

☒ **BY ELECTRONIC SERVICE:** the documents above were delivered electronically through the Court's ECF/PACER electronic filing system, as stipulated by all parties to constitute personal service. Plaintiff also served upon counsel via email.

☐ **BY FACSIMILE:** I transmitted the documents listed above by facsimile machine to the facsimile number listed above. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2008(e)(4), I caused the machine to print a record of the transmission.

☐ **BY MAIL** (1013 a, 2015.5 CCP): I deposited such envelope in the mail at Chicago, Illinois. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. Under that practice, this document will be deposited with the U.S. Postal Service on this date with postage thereon fully prepaid at Chicago, Illinois in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **STATE:** I declare under penalty of perjury under the laws of Illinois that the above is true and correct.

Executed on February 21, 2013, at Los Angeles, California

By: /s/ Ryan Lee
Ryan Lee